Revised

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 37 (MS) OF 2006

1. Amba Prasad Pandey,
   S/o late Shri Bhagwat Prasad,
   R/o Dharamshala Trust, 5, Ghat Road,
   Rishikesh, District-Dehradun.
2. Narendra Atrey,
   S/o late Shri Bhagwat Prasad,
   R/o Dharamshala Trust, 5, Ghat Road,
   Rishikesh, District-Dehradun.

3. Anil Atrey,
   S/o late Shri Bhagwat Prasad,
   R/o Dharamshala Trust, 5, Ghat Road,
   Rishikesh, District-Dehradun.
4. Smt. Bimla,
   W/o late Shri Bhagwat Prasad,
   R/o Dharamshala Trust, 5, Ghat Road,
   Rishikesh, District-Dehradun.
5. Smt. Pushpa,
   W/o late Shri Laxmi Narain,
   R/o Dharamshala Trust, 5, Ghat Road,
   Rishikesh, District-Dehradun.
6. Rajiv Atrey,
   S/o late Shri Laxmi Narain,
   R/o Dharamshala Trust, 5, Ghat Road,
   Rishikesh, District-Dehradun.
8. Dharmendra Atrey,
   S/o late Shri Laxmi Narain,

R/o Dharamshala Trust, 5, Ghat Road,
Rishikesh, District-Dehradun.

9. Pankaj Atrey,
S/o late Shri Laxmi Narain,
R/o Dharamshala Trust, 5, Ghat Road,
Rishikesh, District-Dehradun.

10. Km. Anju Atrey,
D/o late Shri Laxmi Narain,
R/o Dharamshala Trust, 5, Ghat Road,
Rishikesh, District-Dehradun. .....Petitioners.

Versus

1. Civil Judge (Senior Division)
Dehradun.

2. Dharamshala Shambhubara Trust,
Rishikesh, 5 Ghat Road, Rishikesh,
District-Dehradun, through its trustee,
Prabhat Kumar Kapoor.

3. Kailash Chand Kapoor,
S/o late Sri Padam Nath Kapoor,
R/o 5, Ghat Road, Rishikesh,
District-Dehradun.

4. Prabhat Kumar kapoor,
S/o late Shir Padam Nath kapoor,
R/o 5, Ghat Road, Rishikesh,
District-Dehradun.

5. Dr. Raghunath Kapoor,
S/o late Shir Padam Nath kapoor,
R/o 5, Ghat Road, Rishikesh,
District-Dehradun.

6. Yogeshwar Nath Kapoor,

S/o late Shir Rishikesh Kapoor,
R/o 5, Ghat Road, Rishikesh,
District-Dehradun.

7. Shyam Kapoor,
S/o late Shir Madhusudan Kapoor,
R/o 5, Ghat Road, Rishikesh,
District-Dehradun. .....Respondents.

Dated: 30.08.2006

Hon'ble Rajesh Tandon, J.

Heard Sri Ramji Srivastava, Advocate for the petitioner, Sri Alok Singh, Sr. Advocate assisted by Sri K.N. Joshi, Advocate for the respondents no.2 to 7 and Standing Counsel for the respondent no.1.

2. By the present writ petition, the petitioners have prayed for a writ or Certiorari quashing the order dated 06.01.2006 (Annexure No.5 to the writ petition) passed by the Civil Judge (Senior Division), Dehradun/respondent no.1, whereby the application (Paper No. 73C/1) filed by the petitioners/defendants for bringing on record the counter claim in Original Suit No. 762 of 2002 Shambhubara Dharamshala and others Vs. Amba Prasad Atrey and others has been rejected.

3. No ground has been made out for interfering under Articles 226/227 of the Constitution of India. However, if the petitioner is so advised, he can avail the alternative remedy.

However, the Civil Judge is directed to expedite the suit as the same is pending for last more than fours years.

4. Subject to above, writ petition is dismissed. No order as to costs. Stay order dated 18.01.2006 is vacated.

(Rajesh Tandon, J.)

30.08.2006
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